

From: Nina Fischman,
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U.S. DISTRICT COURT E.D.N.Y.

★ JUL 27 2021 ★

To: Hon. Gary R. Brown,
United States District Judge
Eastern District of New York
100 Federal Plaza
Central Islip, New York 11722-9014

LONG ISLAND OFFICE

Re: *Nina Fischman v. Hon. Jerome C Murphy*,
CV-21-3111

Date: July 26, 2021

Your Honor;

I am the Plaintiff in this action.

On June 21, 2021, I asked the Court for more time to properly answer the order to show cause. (ECF 15). On July 26, 2021, the attorney general replied and does not object to the request for more time to respond.

Instead, the attorney general raises new issues calling for a response. Under FRCP 25(d) the claim is not abated by Judge Murphy's resignation and continues in official capacity to his successor.

Further, the discussion of prospective declaratory relief in MacPherson v. Town of Southampton, 664 F. Supp. 2d 203, 211 (E.D.N.Y. 2009) is relevant; although that case ultimately rested on the "Younger Abstention", which is inapplicable to this case. The Younger Abstention applies when all the following elements are met, (1) there is an ongoing state proceeding; (2) an important state interest is involved; and (3) the plaintiff has an adequate opportunity for judicial review of his constitutional claims during or after the proceeding. The complaint alleges that there is no ongoing state proceeding against plaintiff in which an order or judgment has been entered to justify freezing plaintiff's bank accounts. As such plaintiff does not have meaningful judicial review in the State court. It is on this premise that plaintiff seeks prospective declaratory relief, that the continuation of taking plaintiff's personal property (plaintiff's bank account) without a legitimate order or judgment constitute a deprivation of plaintiff's due process.

In order to properly address the factual background relevant to the order to show cause, including addressing FRCP 25(d) and the Younger Abstention, more time is necessary. As such September 13, 2021, will be sufficient time to also respond to the accumulative pleadings of the other defendants.

Very truly yours,
Nina Fischman

